

EX PARTE OR LATE FILED

**LAW OFFICES OF THOMAS K. CROWE, P.C.**

2300 M STREET, N.W.  
SUITE 800  
WASHINGTON, D.C. 20037  
(202) 973-2890  
FAX (202) 973-2891  
FAX (202) 293-3083

February 7, 1997

**BY MESSENGER**

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20037

Re: CC Docket Nos. 96-45; Ex Parte

Dear Mr. Caton:

Following meetings with the Commission staff, the Commonwealth of the Northern Mariana Islands ("Commonwealth")<sup>1</sup> submits this ex parte letter to further clarify its position in the above-captioned proceeding with respect to universal service support for health care providers in the Commonwealth.

The Recommended Decision of the Federal-State Joint Board on Universal Service recognizes the "special circumstances faced by carriers and consumers in the insular areas of the United States, particularly the Pacific Island territories."<sup>2</sup> Any effort to address the issue of support to health care providers must begin with the same fundamental recognition.

As the Commonwealth showed in detail in its Comments filed in this proceeding,<sup>3</sup> the Commonwealth is virtually entirely rural, has no counties, lacks defined "metro" and "non-metro" divisions, and suffers rate variations for calls made between different islands rather than between contiguous points on land. As a result, the current health care proposals contained in the Recommended Decision which focus upon "urban" and "rural" rate disparities (as defined

<sup>1</sup> This letter is submitted by the Office of the Governor of the Commonwealth.

<sup>2</sup> In re Matter of Federal-State Joint Board on Universal Service, Recommended Decision, CC Dkt. No. 96-45, FCC 96J-3 (Nov. 8, 1996) ("Recommended Decision") at ¶ 434.

<sup>3</sup> Comments of the Commonwealth, CC Dkt. No. 96-45, filed Dec. 19, 1996 ("Comments").

No. of Copies rec'd  
List ABCDE

022

William F. Caton

February 7, 1997

Page 2

by counties) are totally inappropriate for determining the support needed by health care providers in the Commonwealth.

In light of the special circumstances presented by the Commonwealth and other Pacific insular areas, the Commonwealth believes that a unique solution is required to ensure that health care providers have access to affordable telecommunications services. That solution should include the following two steps.

**SUPPORT SHOULD BE EXTENDED FOR INTERSTATE  
SERVICES FOR HEALTH CARE PROVIDERS IN PACIFIC INSULAR AREAS**

Given the distant geographical location of the U.S. Pacific insular areas, the Commission should extend a universal service subsidy to all telecommunications services used by health care providers in the Pacific insular areas, including interstate services.

Although Section 254(h)(1)(A) contemplates that services to health care providers in rural areas will be supplied at rates "reasonably comparable to rates charged for similar services in urban areas in that State," other provisions of Section 254 clearly indicate that the Commission has the authority to extend support for interstate services for health care providers in insular areas. Specifically, Sections 254(h)(2)(A), 254(c)(1) and (3) supply this authority.

Section 254(h)(2)(A) provides as follows:

(2) ADVANCED SERVICES.-The Commission shall establish competitively neutral rules-

(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries.

Notwithstanding Section 254(h)(1)(A), this provision gives the Commission considerable discretion in determining how to best enhance access to advanced telecommunications and information services for health care providers. The Joint Explanatory Statement gives but one example of an action the Commission could take under this provision to benefit schools, reflecting the wide latitude afforded the Commission. According to the Joint Explanatory Statement,

"[f]or example, the Commission could determine that telecommunications and information services that constitute universal service for classrooms and libraries shall include dedicated data links and the ability to obtain access to educational materials, research information, statistics, information on Government services, reports developed by Federal, state, and local governments, and information services which can be carried

over the Internet."<sup>4</sup>

Given the wide discretion afforded the Commission under this provision, a sound basis exists for the Commission's extending universal support for the off-island, interexchange communications of health care providers.

In addition, Section 254(c)(3) provides as follows:

(3) SPECIAL SERVICES.-In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h).

This provision also clearly gives the Commission authority to extend support to insular area health care facilities' use of interexchange services. The Joint Board found that "access to interexchange service is essential for education, public health and public safety,"<sup>5</sup> but failed to recommend support for interstate usage. In the case of the Pacific insular areas, however, since adequate health care facilities do not exist on-island and medical referrals off-island are commonly made, it only makes sense to cover interstate usage for health care services given the high cost of placing calls from these areas to either Hawaii or the mainland. With respect to a definition of such "special services", Congress stated that "the conferees expect the Commission and the Joint Board to take into account the particular needs of hospitals, K-12 schools and libraries."<sup>6</sup>

The relief requested by the Commonwealth is the only way that health care providers in the Commonwealth and other Pacific insular areas may receive telecommunications services at rates that are reasonably comparable to urban rates for similar services. As indicated in its Comments, the Commonwealth lacks the facilities, medical specialists and trained personnel to provide advanced or specialized health care, requiring frequent off-island referrals for many patients.<sup>7</sup> Such referrals typically require that the patient and other medical personnel must travel by air to Hawaii or sometimes Guam, which entails significant public costs. Even when the physical transport of patients is not necessary, health care providers in the Commonwealth must frequently make long-distance calls to off-island points for purposes of diagnosis, research,

---

<sup>4</sup> Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 104-458, 104th Cong., 2nd Sess. 132 (1996) ("Joint Explanatory Statement") at 133.

<sup>5</sup> Recommended Decision at ¶ 65.

<sup>6</sup> Joint Explanatory Statement at 133.

<sup>7</sup> See Comments at 20.

or consultation. Health care providers in other U.S. states and urban areas currently experience substantially lower telecommunications costs for health care, not to mention being able to avoid the need for costly patient referrals and the risk to health and safety that attends such off-island referrals.

The relief that the Commonwealth requests is entirely consistent with Congressional intent. In the Joint Explanatory Statement accompanying the 1996 Act, Congress explained that subsection (h) of Section 254 is intended "to ensure that health care providers for rural areas have affordable access to modern telecommunications services that will enable them to provide medical ... services to all parts of the Nation."<sup>8</sup>

Given their distant location from the U.S. mainland and the high telecommunications costs involved in serving such areas,<sup>9</sup> the Commonwealth believes that this interstate support should only be extended to the Pacific insular areas. The cost to the universal service fund of affording support for interstate telecommunications services used by health care facilities in the Pacific insular areas would be de minimis. The total population of the Pacific insular areas (*i.e.*, the Commonwealth, the Territory of Guam and American Samoa) amounts to 264,445 people, or .099% (less than one-tenth of one percent) of the total U.S. population.<sup>10</sup> Viewed from this perspective, any such support extended for health care facilities in the insular areas would be so insignificant as to be imperceptible. Moreover, the actual off-island, interexchange telecommunications cost to place a call from the Pacific insular areas is rapidly dropping.<sup>11</sup> The impetus for this is the Commission's August 7, 1996 Report and Order mandating the implementation of rate integration by August 1, 1997.<sup>12</sup>

---

<sup>8</sup> Joint Explanatory Statement at 132.

<sup>9</sup> See Comments at 2-5.

<sup>10</sup> According to the U.S. Census Bureau, the resident population of the U.S. as of January 31, 1997 is 266,620,841 people. See <http://www.whitehouse.gov//cgt-bin/popclock>.

<sup>11</sup> On August 9, 1996, Micronesian Telecommunications Corporation ("MTC"), the dominant off-island service provider in the Commonwealth, decreased its direct dialed rate (first minute) to the mainland U.S. from \$2.00 per minute to .99 per minute, apparently in anticipation of rate integration. See MTC Tariff F.C.C. No. 1, 1st Revised Page 16B (effective Aug. 9, 1996).

<sup>12</sup> See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Report and Order, CC Dkt. No. 96-61, released Aug. 7, 1996. Rates can be expected to continue to drop as the August 1st rate integration deadline approaches, when off-island rates will be required to be comparable to mainland U.S. interexchange rates.

**IN THE COMMONWEALTH, SAIPAN SHOULD BE RECOGNIZED  
AS AN URBAN AREA, AND TINIAN AND ROTA AS RURAL AREAS**

As the Commonwealth demonstrates in its Comments, the urban/rural rate differential simply will not work in the Commonwealth since the Commonwealth is virtually entirely rural.<sup>13</sup> Instead, rate disparities in the Commonwealth exist for intra-island calls within the islands of Saipan, Tinian and Rota, on the one hand, and interisland calls between the three islands, on the other.<sup>14</sup> MTC provides interisland calls on a 1+ dialing basis and charges \$0.25 per minute for direct dialed calls,<sup>15</sup> whereas no charge is assessed for intra-island calls. Since health care providers serving the Commonwealth must make interisland calls to facilities and patients, such high per minute, interisland charges potentially entail a significant cost even though they are essentially for "local" traffic within the Commonwealth.

In its Comments, the Commonwealth proposes that the Commission recognize Saipan as an "urban" area and Tinian and Rota as "rural" areas for purposes of the urban/rural rate differential.<sup>16</sup> Since Saipan has by far the greatest population density,<sup>17</sup> Saipan most clearly resembles an "urban area" within the Commonwealth. Moreover, callers between the islands must pay the interisland rate differential of \$0.25 a minute, a costly, distance-based surcharge which imposes disproportionate telecommunications costs on health care facilities calling between

---

<sup>13</sup> See Comments at 21-26.

<sup>14</sup> The Commonwealth's population of 58,846 persons is divided primarily between the three islands of Saipan, Tinian and Rota. Saipan, the largest of the Commonwealth's islands, has a total land area of 184.5 square miles and has 52,698 residents (or approximately 89% of the population). The island of Tinian, which is located 2.75 miles south of Saipan, has a total land area of 39 square miles and 2,631 residents. The island of Rota is 73 miles south-southwest of Saipan and has 3,509 residents. Although the population density varies somewhat within each of the islands, all three -- including Saipan -- are in fact rural areas.

<sup>15</sup> *Id.* Incredibly enough, this distance-based surcharge is more than the cost of a typical long distance call from New York to Los Angeles.

<sup>16</sup> According to the Joint board, "the Commission should designate as the rate 'reasonably comparable to rates charged for similar services in urban areas in that state' (the 'urban rate'), the highest tariffed or publicly available rate actually being charged to commercial customers within the jurisdictional boundary of the nearest large city in the state (measured by airline miles from the health care provider's location to the closest city boundary point)"[footnote omitted]. To effectuate the intent of the 1996 Act, the island of Saipan could readily be substituted as the nearest large city in the state since it has clearly defined jurisdictional boundaries.

<sup>17</sup> See Comments at 18-19.

Saipan, and Tinian and Rota. In its Recommended Decision, the Joint Board found that the 1996 Act strongly suggests that such charges should be made comparable. According to the Joint Board,

Several commenters and the Advisory Committee request that we address the issue of distance-based charges and charges for crossing LATA boundaries [footnote omitted]. We conclude that where such charges are in excess of those charges incurred by commercial customers in the nearest urban area, the statute suggests strongly that such charges should be made comparable. Indeed, it seems that the whole thrust of section 254(h)(1)(A) is that such disparities in telecommunications rates based on distance should be reduced or eliminated by universal service support.<sup>18</sup>

The Recommended Decision, however, stops just short of recommending elimination of such distance-based charges, concluding that the record lacks adequate evidence about the costs of excluding such charges.

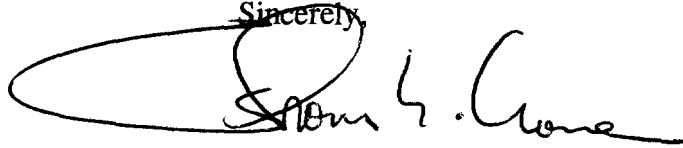
Making such distance-based charges comparable in the case of the Commonwealth would entail minimal costs, and would have a de minimis impact on the universal service funding pool. The reason for this, quite simply, is that the total population of the islands of Tinian and Rota is only 6,140 people. Naturally, only a small portion of this total population figure will fall into the patient category at any one time. Moreover, the cost burden imposed by treating Saipan as an urban area would be reflective of the special circumstances--including the high distance-based, interisland charges--which the Commonwealth faces. Since no other insular area appears to be seeking such relief nor even face similar circumstances, this relief would entail only the Commonwealth and the universal service costs it would generate. While the benefits would be substantial, the cost impact of the relief sought by the Commonwealth would have no discernible impact on universal service costs.

---

<sup>18</sup> Recommended Decision at ¶ 672.

William F. Caton  
February 7, 1997  
Page 7

Please direct any questions to the undersigned.

Sincerely,  


Thomas K. Crowe,  
Counsel for the Commonwealth of the  
Northern Mariana Islands

cc: All Commissioners  
Universal Service Joint Board  
Regina Keeney, FCC  
Mary Beth Richards, FCC  
Robert W. Spangler, FCC  
Kent R. Nilsson, FCC  
Marian Gordon, FCC  
Allen Stayman, Department of Interior  
Gail L. Polivy, GTE  
Del Jenkins, MTC  
Robert F. Kelley, Jr., Guam Governor's  
Office  
Dave Ecret